

(2) The WTC Program Administrator will review the physician's determination, render a decision regarding certification of the individual's diagnosed WTC-related health condition, and provide written notice of the decision and the reason for the decision.

(3) If the individual's condition is certified as a WTC-related health condition, the individual will also be certified as a certified-eligible survivor.

(f) *Denial of certified-eligible survivor status.* (1) The WTC Program Administrator will deny certified-eligible status if he or she determines that the screening-eligible survivor does not have a WTC-related health condition as determined pursuant to §§ 88.12 and 88.13 of this part.

(2) The WTC Program Administrator may deny certified-eligible survivor status of an otherwise eligible and qualified screening-eligible survivor if the WTC Program Administrator determines that the Act's numerical limitations for certified-eligible survivors have been met.

(i) No more than 25,000 individuals, other than those described in § 88.7 of this part, may be determined to be certified-eligible survivors at any time.

(A) The WTC Program Administrator may determine, based on the best available evidence, that sufficient funds are available under the WTC Health Program Fund to provide treatment and monitoring only for individuals who have already been certified as certified-eligible survivors at that time.

(B) [Reserved]

(ii) [Reserved]

(3) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government may qualify to be a certified-eligible survivor in the WTC Health Program.

(g) *Notification of certified-eligible status determination.* (1) An individual who is certified by the WTC Program Administrator as a certified-eligible survivor will be notified in writing by the WTC Program Administrator.

(2) If the WTC Program Administrator denies certification of the screening-eligible survivor's health condition, the screening-eligible survivor may appeal the WTC Program

Administrator's decision to deny certification, as provided under § 88.15.

§ 88.11 Appeals regarding eligibility determinations—responders and survivors.

(a) An individual or his or her designated representative may appeal a denial of enrollment as a WTC responder or a denial of a determination of status as a screening-eligible survivor by sending a written letter to the WTC Program Administrator at the address specified in the notice of denial.

(1) The letter shall be sent within 60 days of the date of the WTC Program Administrator's notification letter, and shall state the reasons why the individual believes the denial was incorrect and may include relevant new evidence not previously considered by the WTC Program Administrator.

(2) Where the denial is based on information from the terrorist watch list, the appeal will be forwarded to the appropriate Federal agency.

(b) The WTC Program Administrator will designate a Federal official independent of the WTC Health Program to review the appeal. The Federal official will issue a final decision after receipt and review.

(c) The WTC Program Administrator may reopen and reconsider a denial at any time.

§ 88.12 Physician's determination of WTC-related health conditions.

(a) A physician in a Clinical Center of Excellence or a member of the nationwide provider network shall promptly transmit to the WTC Program Administrator a diagnosis and the basis for the diagnosis of a WTC-related health condition or health condition medically associated with a WTC-related health condition. The physician's diagnosis shall be made based on an assessment of the following:

(1) The individual's exposure to airborne toxins, any other hazard or any other adverse condition resulting from the September 11, 2001, terrorist attacks.

(2) The type of symptoms experienced by the individual and the temporal sequence of those symptoms.

(b) For a health condition medically associated with a WTC-related health

condition, the physician's determination shall contain information establishing how the health condition has resulted from treatment of a previously certified WTC-related health condition or how it has resulted from progression of the certified WTC-related health condition.

§ 88.13 WTC Program Administrator's certification of health conditions.

(a) *WTC-related health condition.* (1) The WTC Program Administrator will review each physician determination, render a decision regarding certification, and notify the WTC responder, screening-eligible survivor, or certified-eligible survivor of the WTC Program Administrator's decision and the reason for the decision in writing.

(2) If certification is denied, the WTC responder, screening-eligible survivor, or certified-eligible survivor may appeal the WTC Program Administrator's decision to deny certification, as provided under § 88.15.

(b) *Health condition medically associated with a WTC-related health condition.* (1) The WTC Program Administrator will review each physician determination, render a decision regarding certification, and notify the WTC responder or certified-eligible survivor in writing of the WTC Program Administrator's decision and the reason for the decision.

(i) In the course of review, the WTC Program Administrator may seek a recommendation about certification from a physician panel with appropriate expertise for the condition.

(ii) [Reserved]

(2) If certification is denied, the WTC responder or certified-eligible survivor may appeal the WTC Program Administrator's decision to deny certification, as provided under § 88.15.

(c) *Treatment pending certification.* While certification is pending, authorization for treatment of a WTC-related health condition or a health condition medically associated with a WTC-related health condition shall be obtained from the WTC Program Administrator before treatment is provided, except for the provision of treatment for a medical emergency.

§ 88.14 Standard for determining medical necessity.

All treatment provided under the WTC Health Program will adhere to a standard which is reasonable and appropriate; based on scientific evidence, professional standards of care, expert opinion or any other relevant information; and which has been included in the medical treatment protocols developed by the Data Centers and approved by the WTC Program Administrator.

§ 88.15 Appeals regarding treatment.

(a) Individuals may appeal the following decisions made by the WTC Program Administrator: not to certify a health condition as a WTC-related condition; not to certify a health condition as medically associated with a WTC-related health condition; or not to authorize treatment due to a determination by the WTC Program Administrator about medical necessity for a certified WTC-related health condition.

(1) A WTC responder, screening-eligible survivor denied status as a certified-eligible survivor, certified-eligible survivor, or designated representative may appeal a determination by the WTC Program Administrator denying certification of the individual's health condition for coverage under the WTC Health Program or a determination that treatment will not be authorized as medically necessary.

(2) Appeal shall be made in writing, describe the reason(s) why the individual believes the determination is incorrect, and be postmarked within 60 calendar days of the date of the WTC Program Administrator's letter notifying the individual of the WTC Program Administrator's adverse determination. No new documentation will be considered in the appeal process that was not available to the WTC Program Administrator at the time of his or her initial determination.

(b) *Review of appeal.* (1) The WTC Program Administrator will appoint a Federal official to conduct the appeal.

(2) The Federal official may convene one or more qualified experts, independent of the WTC Health Program, to review the WTC Program Administrator's initial determination. The expert reviewers shall base their review